

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 113

MONTANA CLEAN INDOOR AIR ACT

Subchapter 1

Montana Clean Indoor Air Act

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Subchapter 1

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37.113.101 DEFINITIONS In addition to those terms defined in 50-40-103, MCA, the following terms, as used in Title 50, chapter 40, part 1, MCA, have the meaning set forth below:

(1) "Designee" means, for purposes of determining who is designated by the department to act on its behalf in enforcement of the Montana Clean Indoor Air Act of 1979, is any entity with which the department has entered into an agreement outlining mutual responsibilities.

(2) "Enclosed room", for purposes of the definition of "place of work" in 50-40-103, MCA, means an area with a wall on all sides reaching from floor to ceiling, exclusive of windows and doors, and does not include an area completely or partially open to the outside air such as a roofed shelter.

(3) "Private residence" means the personal living quarters of an individual, regardless of the legal status of the property, such as incorporation of a ranch, unless the residence is part of a structure, such as a health care facility, where smoking is specifically prohibited by Title 50, chapter 40, part 1, MCA. (History: 50-40-110, MCA; IMP, 50-40-103, 50-40-104, MCA; NEW, 2005 MAR p. 2079, Eff. 10/28/05.)

Rules 02 and 03 reserved

MONTANA CLEAN INDOOR AIR ACT

37.113.104

37.113.104 BARS, CERTIFICATION OF QUALIFICATION FOR EXCEPTION (1) An establishment, as defined in 50-40-103, MCA, may apply to the department for a certificate indicating that the department has determined that it is a bar qualifying for the exception from the provisions of Title 50, chapter 40, part 1, MCA, as provided in 50-40-104(5), MCA.

(2) An application for certification may be obtained from the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) A completed application must be submitted to the department at the address cited in (2). The signature and documentation required by the application will be verified by the department or its designee.

(4) If the department or its designee determines, at the time of application or after a certificate has been granted, that the establishment does not qualify for the exception allowed by 50-40-104(5), MCA, written notice of that decision and the factual basis for the decision will be sent to the individual who submitted the application.

(5) By November 30 and May 31 of each year, the department will mail to the local board of health of each county a list of the bars in that county that have a current certificate of exception.

(6) Each bar that qualifies for an exception from the provisions of Title 50, chapter 40, part 1, MCA, must post, at the entrance to the bar, an easily readable sign that minors are not allowed in the areas where smoking is allowed. (History: 50-40-110, MCA; IMP, 50-40-104, 50-40-108, MCA; NEW, 2005 MAR p. 2079, Eff. 10/28/05.)

Rules 05 through 07 reserved

MONTANA CLEAN INDOOR AIR ACT 37.113.108

37.113.108 INSPECTIONS AND ENFORCEMENT (1) The department, a local health board and their respective designees may conduct inspections of:

(a) enclosed public places to determine if any violation of the Montana Clean Indoor Air Act, Title 50, chapter 40, parts 1 and 2, MCA has occurred; and

(b) public school property to determine compliance with 20-1-220, MCA, relating to smoking on public school property.

(2) For every inspection conducted, a written inspection report must be made and retained by the agency conducting the inspection.

(3) An establishment that serves food but purports to qualify as a bar within the definition contained in 50-40-103(5), MCA must upon request submit to the department, a local health board, or the designee of either, the documentation necessary to prove that at least 60% of the establishment's annual gross income comes from the sale of alcoholic beverages, gambling receipts, or both.

(4) Any violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA must be reported to the local health board or its designee and the county attorney of the county in which the violation occurred. (History: 50-40-110, MCA; IMP, 20-1-220, 50-40-104, 50-40-108, MCA; NEW, 2005 MAR p. 2079, Eff. 10/28/05.)

Rules 09 through 11 reserved

MONTANA CLEAN INDOOR AIR ACT 37.113.112

37.113.112 COMPLAINT PROCEDURE REGARDING SMOKING VIOLATIONS (1) An individual who believes that a violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA has occurred may file a written complaint with the department or the local health board or its designee that describes the violation, provides the date of the violation and is signed by the complaining party.

(2) If a complaint is filed with the local health board, a copy of the complaint must be forwarded within five working days after the end of the month in which it was received to the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) If a complaint is filed initially with the department or a designee of the department, a copy will be forwarded within five working days to the local health board of the county in which the violation allegedly occurred.

(4) Once a complaint is filed, the department or a designee of the department, which may include the local health department, will conduct an investigation to determine if a violation occurred.

(5) If the department or its designee, after an investigation, determines that a violation did occur, it will document the violation and file the documentation and the determination of the department or its designee with the office of the county attorney in the county where the violation occurred. (History: 50-40-110, MCA; IMP, 20-1-220, 50-40-104, 50-40-108, MCA; NEW, 2005 MAR p. 2079, Eff. 10/28/05.)

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